IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3194 OF 1985

National Textile Corporation
(S.M.)Ltd ....Plaintiffs.
vs.
Garment Enterprises Ltd ....Defendants.

Mr.Sriniwas Deshmukh i/by.Bhaishankar Kanga & Girdharlal for the plaintiffs.

Ms. Mili V. Thakakr with Deepal J. Thakkar i/by.Gordhandas and Fozdar for the defendants.

CORAM: S.J. VAZIFDAR, J.

NOVEMBER 17, 2006.

P.C. :

1. The order dated 19/10/1983 is by consent taken on record and marked Exhibit P2.

2. The suit is filed to recover a sum of Rs.19,43,621/- with interest at the rate of 18% p.a. from the date of the suit till payment.

2. The plaintiff is a subsidiary of the National

Textile Corporation Ltd (NTC). Under the provisions of the Textile Undertakings (Taking Over of Management) Act 2003 and the orders passed thereunder the plaintiff has been appointed as an additional custodian of the textile undertaking of the Gold Mohur Mills Ltd (GMML).

3. The defendant is a wholly owned subsidiary of GMML. Prior to 1975, the GMML had lent and advanced a sum of Rs.5 lacs to the defendant which was agreed to be repaid with interest at the rate of 3% per month. During the period 30/6/1979 to 30/6//1982 a further sum aggregating to Rs.6,11,471/- was lent and advanced by GMML to the defendant on similar terms. As on 30/6/1982 an aggregate amount of Rs.12,38,329/- which included interest was due and payable by the defendant to GMML.

4. The aforesaid amounts has been admitted and acknowledged in the Annual Report and Balance Sheet of the defendant itself as well as GMML.

5. The suit is also filed to recover the amounts

in respect of another transaction in the sum of Rs.7,05,292/-. The same has not been pressed. It is not necessary therefore to deal with the same.

6. The suit was filed on 26/11/1985. No written statement has been filed.

7. The plaintiff examined its Deputy Manager, one Mr.D.J. Kshirsagar by filing his affidavit-in-lieu of oral evidence dated 22.6.2006. The witness has set out the aforesaid facts. The witness has averred that under the provisions of the said Act, the amounts claimed in the suit are due. He also deposed to the fact of the Textile Undertakings (Rules) Act, 1995. He has further stated that the defendant has admitted its liability in its Annual Report and Balance Sheet dated 26/11/1982 (wrongly mentioned as 1986 due to typographical error) under the head ‘Unsecured Loans’. He has further expressly stated that the defendant has also admitted the sum payable in its Books of Accounts.

8. The witness was cross-examined. An attempt

has been made to establish that the amounts were not due in respect of the textile undertaking, the management of which was taken over/ which was nationalised. Curiously, however, the defendant itself did not file a written statement or lead any evidence. For 20 years, the plaintiff's assertion that the amount is due in view of the provisions of the said Act has remained unchallenged. Further this is a fact which would be to the knowledge of the defendant itself. The defendant has chose to remain silent. These circumstances justify an adverse inference against the defendant to the effect that if the defendant had filed a written statement and led evidence it would have established that the claim is due in view of the provisions of the said Act. Further the positive assertion that the amount is due under the said Act remains uncontroverted.

9. No adverse inference can be drawn against the plaintiffs witness for not having personal knowledge. Indeed he would not have personal knowledge. The plaintiff took over the management

and ultimately the undertaking itself for reasons which are now well documented including in several judgments dealing with provisions of the Act.

10. The transactions itself was also not denied as no written statement was filed. Strictly speaking it may not even have been necessary for the plaintiff to lead any evidence. The cross-examination does not affect the testimony of the plaintiff's witness regarding his knowledge of the transaction. I have no hesitation therefore in holding that the transaction has been established.

11. Added to this is the clear admission made by the defendant the wholly owned subsidiary GMML and GMML itself. The plaintiff tendered in evidence (Exhibit P1) which the 56th Annual Report for the year 1981-82. In compliance with the provisions of law, GMML annexed to its said Annual Report the Annual Report and Accounts for the year 1981-82 of the defendant. This document is admitted. There was no objection to the same. GMML in clear terms

admits therein while setting out its current assets, Loans and Advances that the aforesaid amount is due from its subsidiary i.e. the defendant. The defendant itself also in its Balance Sheet expressly admits the said amount from GMML. Needless to add that the balance sheet has been signed by the Chairman and the Directors of the defendant. Thus the fact of the existence and of the transaction having been entered into is established. The balance sheet admits and acknowledges the balance amount due. It is not as if the plaintiff has only relied upon the acknowledgement to establish the principle transaction. The principle transaction is established. The acknowledgment is evidence of the amount due.

11. In the circumstances, the suit is decreed in the sum of Rs.12,38,329/- together with interest on the amount of Rs.11,11,471/- at the rate of 18% p.a. from the date of the suit till payment and/or realisation. The defendants shall also pay the costs of the suit as per rules. The plaintiff is at liberty to take the original documents tendered in

court in evidence but not received in evidence upon undertaking to produce the same when called upon.

sd/-

****